

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES E. CORLISS,) Case No. C04-2357-JLR-JPD
Petitioner,)
v.) REPORT AND RECOMMENDATION
JOSEPH LEHMAN,)
Respondent.)

I. INTRODUCTION

Petitioner has filed a *pro se* petition for writ of habeas corpus challenging his 1995 conviction in state court for solicitation to commit murder. After reviewing the parties' briefs and the state court record, this Court recommends that the petition be denied.

II. FACTS & PROCEDURAL HISTORY

On August 28, 1995, petitioner, who was represented by defense counsel, pled guilty in King County Superior Court to one count of solicitation to commit murder. Dkt. No. 14, Ex. 1, 9. In his plea, petitioner wrote out the elements of his crime and then, in his own words, wrote out how his actions satisfied the elements of the offense:

I paid \$50 to a man who was supposed to be a hit man according to the man who arranged the meeting, Kevin Barnhill. I knew that a hit man is a person who kills people for money. The hit man turned out to be an undercover police officer. The people named in the information are people who I thought were threatening me, as

01 well as the mother of my children who was I believed putting them in a bad
 02 environment. This occurred in King County. I paid money to the “hit man” with
 03 the intent that the “hit man” kill [the intended victims].

04 Dkt. No. 14, Ex. 9. The signed plea also indicated that petitioner had read the entire document
 05 and had made his plea freely and voluntarily. Dkt. No. 14, Ex. 9. Following his conviction,
 06 petitioner was sentenced to 180 months of incarceration. Dkt. No. 14, Ex. 1.

07 While the Judgment and Sentence correctly identified the conviction as criminal
 08 solicitation, it cited an inapplicable portion of the Revised Code of Washington. Dkt. No. 14,
 09 Ex. 1. Rather than identifying RCW 9A.28.030(1), the solicitation to commit murder section, it
 10 cited 9A.32.030(1)(c), the section describing murder in the first degree.¹ Dkt. No. 14, Ex. 1.

11 Petitioner collaterally attacked his conviction by filing a personal restraint petition which
 12 argued, *inter alia*, that the charging documents were flawed and that the statute under which he
 13 was convicted was ambiguous. Dkt. No. 14, Ex. 2. The Washington Court of Appeals,
 14 however, denied that petition on October 22, 2003. Dkt. No. 14, Ex. 3. Petitioner then filed a
 15 Motion for Reconsideration with the Washington Supreme Court that raised similar issues, but
 16 the motion was denied. Dkt. No. 14, Ex. 4, 5. Petitioner then moved to modify the
 17 Commissioner’s ruling, but was again denied. Dkt. No. 14, Ex. 6, 7. On October 8, 2004, the
 18 Washington Court of Appeals issued a certificate of finality. Dkt. No. 14, Ex. 8.

19 Petitioner timely filed this petition on November 22, 2004. Dkt. No. 1.

20 **III. CLAIMS FOR RELIEF**

21 Petitioner raises a number of claims. Dkt. No. 1. In his first group of claims he argues
 22 that the charging documents used against him were inaccurate and incomplete, and that these
 23 deficiencies violate the Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S.
 24 Constitution. Dkt. No. 1 at xi. Petitioner’s second group of claims appear to stem from his

25
 26 ¹The Amended Information used to charge petitioner referred to both the solicitation statute, 9A.28.030(1),
 and and to the first degree murder statute, 9A.32.030(1)(a). Dkt. No. 14, Ex 2.

01 belief that the murder statute cited in the Amended Information and Judgment and Sentence was
02 a factor in his conviction. He essentially asserts that his guilty plea was not knowing and
03 voluntary and that he received ineffective assistance of counsel.²

As discussed below, the Court recommends petitioner's claims be dismissed because they raise pre-plea constitutional issues and do not provide sufficient grounds for this Court to grant a writ of habeas corpus.

07 | IV. DISCUSSION

A. Petitioner's Claims Re: The Constitutional Validity of the Charging Documents are Barred by His Valid Guilty Plea

Generally, once a petitioner has entered a valid guilty plea, he may not then bring a collateral attack that alleges the deprivation of constitutional rights for the period before the plea. *See Tollett v. Henderson* 411 U.S. 258, 265-67 (1973); *Journigan v. Duffy*, 552 F.2d 283, 287 (9th Cir. 1977). A guilty plea breaks the chain of events that preceded it in the criminal process because a guilty plea establishes the factual guilt of the defendant. *Tollet*, 411 U.S. at 266-67; *Journigan*, 552 F.2d at 288.

16 Although a valid guilty plea bars collateral attacks for the pre-plea period, petitioners
17 may challenge the voluntary and intelligent character of their guilty plea or counsel's
18 ineffectiveness in advising the petitioner to enter a plea. *See Tollett*, 411 U.S. at 267;
19 *Journigan*, 552 F.2d at 287 n.6. The knowing and voluntary standard requires that the
20 defendant understand the nature of the charge, as well as "the law in relation to the facts."
21 *McCarthy v. United States*, 394 U.S. 459, 466 (1969); *United States v. \$31,697.59 Cash*, 665
22 F.2d 903, 905 (9th Cir.1982); Fed. R. Crim. P. 11(c). Thus, the record must establish that there
23 is an adequate factual basis for a guilty plea.

²⁴ Petitioner also argues that he is not procedurally barred by the running of the statute of limitations. This
²⁵ Report and Recommendation does not address that argument, however, because the statute of limitations is not
an issue in this case and is not raised as a defense by the state. Additionally, petitioner argues he has shown good
²⁶ cause sufficient to warrant withdrawal of his guilty plea. This argument, however, is not factually or legally
distinct from his attack on the knowing and voluntary nature of his plea.

01 Here, petitioner argues that the Amended Information used to charge him was
02 constitutionally deficient. Dkt. No. 1. Petitioner cites a variety of cases to essentially argue that
03 the Amended Information failed to identify the “supporting elements” of the law he violated.
04 Dkt. No. 1. He contends that the absence of these essential elements violates the Constitution,
05 including the Fifth, Sixth, Eighth, and Fourteenth Amendments. Dkt. No. 1.

06 Petitioner’s claims relating to the sufficiency of his charging documents, however, are
07 barred because he entered a valid guilty plea. The evidence overwhelmingly demonstrates that
08 petitioner understood the elements of solicitation to commit murder – the crime with which he
09 was charged and to which he pleaded guilty – as well as how his actions satisfied those
10 elements. In his guilty plea, plaintiff wrote that he was charged with the crime of “criminal
11 solicitation to commit murder” and that the elements of the crime are to “pay or give something
12 of value to another with intent to promote or facilitate a specific act which if completed by the
13 other person would constitute murder in the first degree.” Dtk. No. 14, Ex. 9.

14 Moreover, petitioner stated in his own words precisely what actions he committed that
15 constituted this crime. *See supra* page 1; Dtk. No. 14, Ex. 9. The plea indicates that it was
16 made freely and voluntarily and that petitioner had at least a high school education. Indeed,
17 petitioner does not allege that this statement was coerced and there is no evidence in the record
18 to suggest such. All of petitioner’s claims relating to his pre-plea period must therefore be
19 dismissed.

20 B. The State Courts’ Adjudications of Plaintiff’s Remaining Claims Were Proper

21 To the extent petitioner also attacks the knowing and voluntary nature of his plea, the
22 constitutionality of the statute used to convict him, and the effectiveness of his counsel, his
23 arguments must be analyzed under the Anti-Terrorism and Effective Death Penalty Act of 1996
24 (“AEDPA”). AEDPA limits the power of federal courts to grant writs of habeas corpus to state
25 prisoners. *Williams v. Taylor*, 529 U.S. 362 (2000). Federal courts may only grant a habeas
26 petition to prisoners whose claims have been adjudicated on the merits by state courts if the

01 adjudication either “resulted in a decision that was contrary to, or involved an unreasonable
02 application of, clearly established federal law, as determined by the Supreme Court of the
03 United States; or (2) resulted in a decision that was based on an unreasonable determination of
04 the facts in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d).
05 State court decisions can be contrary to clearly established federal law either by arriving at a
06 legal conclusion opposite to one reached by the Supreme Court, or by arriving at an opposite
07 conclusion based upon a set of materially indistinguishable facts. *Williams*, 592 U.S. at 404.
08 State court findings of fact are presumed to be correct unless petitioner demonstrates otherwise
09 by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

10 Here, petitioner appears to argue that his guilty plea was not knowing and voluntary
11 because his attorney did not properly inform him about the effect that the murder statute would
12 have on his conviction. He claims that, had he understood the true nature of the charges, he
13 would not have pleaded guilty. Petitioner also makes broad claims that the statute used to
14 convict him is constitutionally ambiguous.

15 Based on the record, however, this Court cannot find that the state court evaluations of
16 petitioner’s claims were contrary to or an unreasonable application of clearly established federal
17 law. As discussed above, petitioner’s guilty plea was made knowingly and voluntarily. The
18 judgment’s typographical error notwithstanding, it correctly identifies petitioner’s crime. Dkt.
19 No. 14, Ex. 1. Moreover, the guilty plea clearly states that petitioner is charged with criminal
20 solicitation to commit murder, identifies the essential elements of the crime, and describes how
21 petitioner’s actions satisfied those elements. *See supra* section IV.A; Dkt. No. 14, Ex. 9. This
22 shows petitioner understood the law in relation to the facts of his case. No cases cited by
23 petitioner nor any identified by this Court indicate that upholding a conviction in the face of
24 such harmless error conflicts with Supreme Court precedent. Petitioner’s guilty plea was
25 therefore knowing and voluntary and the state courts’ decisions were proper.

26 Similarly, petitioner’s ineffective assistance of counsel argument must fail. This

01 argument is based on petitioner's erroneous belief that his attorney failed to properly inform him
02 about the impact the murder statute on his conviction. Indeed, petitioner argues that "murder
03 does not fit the case at hand," and arguments to that effect, throughout his briefs. *See e.g.* Dkt.
04 No. 1 at 17. As both the Washington Court of Appeals and Washington Supreme Court
05 pointed out, however, the erroneous citation of the murder statute in the Judgment and
06 Sentence was nothing more than a harmless clerical error. Dkt. No. 14, Ex 3, 5. Such harmless
07 error does not provide grounds for federal habeas relief.

08 Finally, petitioner's assertion that the statute used to convict him is unconstitutionally
09 ambiguous is insufficient for this Court to grant habeas relief. As the Washington Supreme
10 Court noted, the solicitation to commit murder statute clearly describes the elements of the
11 crime and identifies the manner in which it is to be punished. Dkt. No. 14 Ex. 5. Petitioner
12 raises no cognizable arguments to the contrary nor presents this Court with any authority that
13 indicates the state court ruling is inconsistent with Supreme Court precedent. Petitioner has
14 therefore failed to demonstrate that his petition should be granted.

15 V. CONCLUSION

16 Because petitioner entered a knowing and voluntary guilty plea, his arguments attacking
17 alleged constitutional deficiencies for the pre-plea period are barred. Petitioner's ineffective
18 assistance of counsel argument and attack on the validity of his guilty plea are erroneously based
19 on his misunderstanding that the murder statute cited in his Judgment and Sentence had a
20 material effect on his conviction. The record demonstrates they did not. Finally, petitioner has
21 not shown that the statute used to convict him was so unconstitutionally ambiguous that a writ
22 of habeas corpus should be granted. For these reasons, the Court recommends the petition be
23 denied. A proposed order accompanies this Report and Recommendation.

24 DATED this 7th day of April, 2005.

25 /s/ James P. Donohue
26 United States Magistrate Judge